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March 16, 2009

VIA HAND-DELIVERY

Mr. Jeff S. Jordan
Supervisory Attorney, Complaints
Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6166 (Republican Party of Minnesota et al.)

Dear Mr. Jordan:

This office represents the Republican Party of Minnesota ("RPM"), the Coleman Minnesota Recount Committee, and Anthony Sutton as Treasurer (collectively "Respondents") in the above-captioned MUR.

We have reviewed the Complaint filed on January 30, 2009, by Brian Melendez on behalf of the Minnesota Democratic-Farmer-Labor Party. As detailed below, there is no reason to believe that a violation occurred with respect to any of the allegations contained in the Complaint. Accordingly, the Commission should promptly dismiss the Complaint.

THE COMPLAINT

The Complaint alleges without any factual evidence that the Republican National Lawyers Association ("RNLA") made unlawful corporate and excessive contributions to RPM, the Coleman Minnesota Recount Committee, and to Senator Norm Coleman's campaign committee, Coleman for Senate '08 ("Coleman Campaign") in connection with the Coleman-Franken recount that arose out of the 2008 U.S. Senate election in Minnesota ("Coleman-Franken Recount"). Complaint at 3. The Complaint urges the Commission to "investigate to determine whether Coleman has received illegal soft money donations – either directly or in the form of coordinated expenditures – from the RNLA." *Id.* The Complaint further alleges that "Coleman and the RNLA may have failed to properly report contributions" to the Commission. *Id.* at 4. The Complaint contends that "[i]f Coleman received contributions from the RNLA, he and the RNLA would have had to report them to the FEC. Neither party has done so." *Id.* Finally, the Complaint alleges that RNLA

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Washington, DC 20005-3960
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has failed to register with the Commission as a political committee under 2 U.S.C. § 431(4) and § 433 of the Federal Election Campaign Act of 1971, as amended ("Act" or "FECA").¹

FACTUAL BACKGROUND

On December 1, 2008, Respondents, pursuant to FEC regulations at 11 C.F.R. § 102.17, established the Coleman Minnesota Recount Committee and filed a Statement of Organization with the Commission. See Coleman Minnesota Recount Committee Statement of Organization (attached hereto as Exhibit 1). The Coleman Minnesota Recount Committee's participants included RPM and the Coleman Campaign. The Coleman Minnesota Recount Committee has duly disclosed its joint fundraising activities through disclosure reports filed pursuant to Commission regulations. See Coleman Minnesota Recount Committee 2008 Year-End Report.² In light of Advisory Opinion 2006-24 (National Republican Senatorial Committee *et al.*), all of the funds raised and spent through the Coleman Minnesota Recount Committee and by RPM otherwise in connection with the Coleman-Franken Recount have been with funds raised subject to the source prohibitions, amount limitations, and reporting requirements of FECA.

Upon information and belief, the RNLA is a political organization that operates under Section 527 of the Internal Revenue Code and is not registered as a political committee under the Act. Upon information and belief, the RNLA, as a duly-organized Section 527 entity, accepts corporate contributions and other contributions outside of the source prohibitions and amount limitations of FECA. Consistent with its disclosure reports filed with the Commission, the Coleman Minnesota Recount Committee has not received any contributions from RNLA. RPM likewise has not received any contributions from RNLA during the 2008 election cycle or thereafter.

THE LAW

Commission regulations permit political committees, including state party committees and federal campaign committees, to engage in joint fundraising activities to raise federal funds subject to the source prohibitions, amount limitations, and reporting requirements of the Act. See 11 C.F.R. § 102.17. Pursuant to these provisions, the participants in a joint fundraising effort must either establish a separate political committee or select a participating committee to serve as their joint fundraising representative. See 11 C.F.R. § 102.17(a)(1)(i). The joint fundraising representative must be a reporting political committee and must also be an authorized committee of each participant who is a candidate for federal office. Id. If the participants establish a separate political committee to act as the fundraising representative, that committee must "collect

¹ Given that the political committee allegation does not concern RPM or the Coleman Minnesota Recount Committee, that allegation is not addressed herein.

² The Coleman Minnesota Recount Committee to date has not received any Requests for Additional Information ("RFAs") regarding its disclosure reports.

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contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant." 11 C.F.R. § 102.17(b)(1). Participants also must "calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated." 11 C.F.R. § 102.17(c)(7)(i)(A). Joint fundraising committees report their contributions and disbursements pursuant to 11 C.F.R. § 102.17(c)(8).

2 U.S.C. § 441i(e)(1)(A) provides that federal candidates and officeholders shall not

solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

See also 11 C.F.R. § 300.60 and § 300.61 (applying the foregoing restrictions to federal candidates and officeholders, agents acting on behalf of federal candidates and officeholders, and to entities established, financed, maintained or controlled by federal candidates and officeholders).

In Advisory Opinion 2006-24, the Commission concluded that recount funds established by federal candidates and officeholders are subject to the restrictions of 2 U.S.C. § 441i(e)(1)(A) and therefore "any funds solicited, received, directed, transferred or spent [in connection with federal recounts] are subject to the amount limitations, source prohibitions and reporting requirements of the Act." *Id.* at 4. The FEC stated that "Congress's choice of the 'in connection with' standard in 2 U.S.C. § 441i(e)(1)(A) requires the Commission to conclude that section 441i(e)(1)(A) applies to funds raised or spent on recounts of Federal elections." *Id.* at 6. The Commission likewise concluded that state party recount activities involving federal races "are disbursements in connection with a Federal election." *Id.* at 7 (citing 11 C.F.R. § 102.5(a)(1)(i) and 11 C.F.R. § 300.30(b)(3)(iii)). Accordingly, "a recount fund established by the State Party to conduct recount activities in support of the party's Federal candidates must be a Federal account containing only Federal funds." *Id.* at 8. Advisory Opinion 2006-24 indicated that state parties must report all recount "receipts and disbursements to the Commission in accordance with 2 U.S.C. 434 and 11 CFR 104.3..." *Id.*

The Commission emphasized in Advisory Opinion 2006-24 that "[t]he limitations on coordinated spending by the State Party for a particular candidate are not applicable to a State Party's recount fund." *Id.* at 9. The FEC noted that the coordinated expenditure limits of 2 U.S.C. § 441a(d)(3) are applicable only "in connection with the general election campaign of a candidate for Federal office." *Id.* (quoting 2 U.S.C. § 441a(d)(3)). In concluding that the coordinated expenditure limits are not applicable to state party federal recount activities, the Commission stressed that recounts "are not in connection with the general election *campaign* of the Federal candidate because the campaign has ended and because such funds are not otherwise permitted to be used for campaign activity." *Id.* (emphasis in original).

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DISCUSSION

For the reasons set forth below, the Commission should find no reason to believe that Respondents violated the Act and should promptly dismiss the Complaint.

I. The Complaint Fails to Meet the "Reason to Believe" Threshold.

A "reason to believe" finding that a violation occurred is only appropriate when a complaint sets forth specific facts that, if proven true, would constitute a violation of the Act. See 11 C.F.R. §§ 111.4(a) & (d). "Unwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true." Statement of Reasons in MUR 4960 at 2 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee) (December 21, 2000) (internal citations omitted). See also Statement of Reasons in MUR 5141 (Moran for Congress) at 2 (March 11, 2002) ("A complainant's unwarranted legal conclusions from asserted facts will not be accepted as true.").

The Complaint here contains little more than groundless speculation and innuendo, including the baseless allegation that Senator Coleman and presumably the Respondents have "received illegal soft money donations – either directly or in the form of coordinated expenditures – from the RNLA." Complaint at 3.³ Because the Complaint fails to meet the "reason to believe" threshold and minimum procedural requirements, the Complaint should be dismissed.

II. Given That the Coleman Minnesota Recount Committee and RPM Have Not Received Any Contributions from RNLA, There Is No Reason to Believe That Respondents Have Violated the Fundraising Restrictions That Apply to Federal Recount Activities.

The Complaint alleges that "Coleman" and presumably RPM and the Coleman Minnesota Recount Committee have received "illegal soft money donations" from the RNLA. Complaint at 3. In fact, the Coleman Minnesota Recount Committee has not received any contributions from RNLA, let alone contributions that are outside the source prohibitions and amount limitations of FECA. Moreover, RPM has not received any contributions from RNLA during the 2008 election cycle or thereafter, let alone contributions that were raised outside of the prohibitions and limits of the Act. Rather, both the Coleman Minnesota Recount Committee and RPM have conducted their activities in connection with the Coleman-Franken recount consistent with 2 U.S.C. § 441i(e)(1)(A) and the Commission's ruling in Advisory Opinion 2006-24 that "any funds solicited, received,

³ The Complaint merely alleges that "Coleman" may have received unlawful donations and fails to reference RPM, the Coleman Minnesota Recount Committee, or even the Coleman Campaign as the alleged recipients of the donations. Complaint at 3. 11 C.F.R. § 111.4(d)(1) requires complaints to "clearly identify as a respondent each person or entity who is alleged to have committed a violation." The Complaint here fails to satisfy even this minimum procedural requirement.

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directed, transferred or spent [by federal candidates in connection with federal recounts] are subject to the amount limitations, source prohibitions and reporting requirements of the Act." Advisory Opinion 2006-24 at 4. See also *id.* at 7 (concluding that state party recount activities involving federal races "are disbursements in connection with a Federal election.") (citing 11 C.F.R. § 102.5(a)(1)(i) and 11 C.F.R. § 300.30(b)(3)(iii)); *id.* at 8 ("A recount fund established by the State Party to conduct recount activities in support of the party's Federal candidates must be a Federal account containing only Federal funds.").

Because Respondents have not received any contributions from RNLA in connection with the Coleman-Franken Recount, there is no reason to believe that Respondents accepted impermissible contributions from RNLA in violation of the fundraising restrictions in 2 U.S.C. § 441i(e)(1)(A) and Advisory Opinion 2006-24.

III. Given That Respondents Did Not Receive Any Contributions from RNLA, There is No Reason to Believe That They Violated the Act's Reporting Requirements.

As was noted above, Commission regulations permit political committees, including state party committees and federal campaign committees, to engage in joint fundraising activities subject to the reporting requirements of the Act. See 11 C.F.R. § 102.17. Specifically, joint fundraising committees report their contributions and disbursements pursuant to 11 C.F.R. § 102.17(c)(8). State party committees must report all recount "receipts and disbursements to the Commission in accordance with 2 U.S.C. 434 and 11 CFR 104.3 . . ." Advisory Opinion 2006-24 at 8.

The Complaint speculates that "[i]f Coleman received contributions from the RNLA, he and the RNLA would have had to report them to the FEC. Neither party has done so." Complaint at 4.⁴ The Coleman Minnesota Recount Committee filed a Statement of Organization with the FEC on December 1, 2008, and duly filed its 2008 Year-End Report with the Commission on January 28, 2009. In so doing, the Coleman Minnesota Recount Committee complied with the registration and reporting requirements found in 11 C.F.R. § 102.17. Moreover, because neither RPM nor the Coleman Minnesota Recount Committee received any contributions from RNLA in connection with the Coleman-Franken recount, Respondents were not required to report any such contributions from RNLA. Accordingly, there is no reason to believe that Respondents violated FECA's reporting requirements.

⁴ The Complaint once again does not identify RPM, the Coleman Minnesota Recount Committee, or even the Coleman Campaign as allegedly failing to meet the Act's reporting requirements. See Complaint at 4 (referring merely to "Coleman" and "RNLA"). As outlined above, 11 C.F.R. § 111.4(d)(1) requires complainants to "clearly identify as a respondent each person or entity who is alleged to have committed a violation." Complainant's reporting allegations against Respondents should be dismissed on this basis alone.

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IV. There Is No Reason to Believe That RNLA Made Coordinated Expenditures On Behalf of the Respondents.

The Complaint further speculates that "Coleman" may have "received soft money donations – either directly or in the form of coordinated expenditures – from the RNLA." Complaint at 3.³ However, the Complaint fails to identify with specificity or otherwise any coordinated expenditure that RNLA allegedly made on behalf of Respondents. As was noted above, a "reason to believe" finding that a violation occurred is only appropriate where, unlike here, a complaint sets forth specific facts that, if proven true, would constitute a violation of the Act. See 11 C.F.R. §§ 111.4(a) & (d).

Moreover, the Act defines an "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office . . ." 2 U.S.C. § 431(9)(A)(i) (emphasis added). See also 11 C.F.R. § 109.20 (defining expenditures that are coordinated with federal candidates and political party committees); 11 C.F.R. § 109.21(c)(4) (defining coordinated communications as including public communications that reference federal candidates, air 90 or 120 days before a federal election, and meet other requirements). The Commission has rightly concluded that party committee coordinated expenditure limits are not implicated by federal recount activities given that recounts are "are not in connection with the general election *campaign* of the Federal candidate because the campaign has ended . . ." Advisory Opinion 2006-24 at 9 (emphasis in original).

Because recount activities take place after an election is held, disbursements made in connection with recounts are not for the purpose of influencing a federal election and therefore cannot as a matter of law qualify as expenditures or coordinated expenditures under the Act and Commission regulations. Similarly, because recount activities occur after the election, as did Respondents' and RNLA's activities regarding the Coleman-Franken Recount, recount disbursements cannot as a matter of law qualify as coordinated public communications under 11 C.F.R. § 109.21(c)(4) (limited to public communications that air 90 or 120 days before a federal election).

In light of the foregoing, there is no reason to believe that Respondents received any coordinated expenditures from RNLA.

³ The Complaint yet again fails to reference RPM, the Coleman Minnesota Recount Committee, or even the Coleman Campaign as allegedly receiving coordinated expenditures from RNLA. See Complaint at 3 (referring merely to "Coleman"). In light of the requirements of 11 C.F.R. § 111.4(d)(1), the complainant's coordination allegations against Respondents should be dismissed on this ground alone.

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CONCLUSION

For all the reasons set forth above, the Commission should find no reason to believe that Respondents violated the Act and should promptly dismiss the Complaint.

Sincerely,

A handwritten signature in cursive script that reads "Michael E. Toner" followed by a small flourish.

Michael E. Toner
Corinne A. Falencki

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Exhibit 1

FEC
FORM 1

STATEMENT OF
ORGANIZATION

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Office Use Only

1. NAME OF COMMITTEE (in full) (Check if name is changed) Example: If typing, type over the lines.

12724N5

COLEMAN MINNESOTA RECOUNT COMMITTEE

ADDRESS (number and street)

20 BOX 14483



(Check if address is changed)

ST. PAUL

MINN

55114

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS

cf50talent@yahoo.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

COMMITTEE'S FAX NUMBER

(801)-654-1322

2. DATE

11/17/2008

3. FEC IDENTIFICATION NUMBER

4. IS THIS STATEMENT



NEW (N)

OR



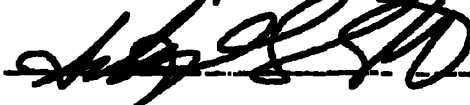
AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Anthony G. Sutton

Signature of Treasurer



Date

11/17/2008

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. (437g).

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office
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For further information contact:
Federal Election Commission
Toll Free 800-424-9595
Local 202-694-1100

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(Revised 12/2007)

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6. TYPE OF COMMITTEE

Candidate Committee:

- (a) ☐ This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) ☐ This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate

Candidate

Party Affiliation

Office Sought:

House

Senate

President

State

District

- (c) ☐ This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate

Party Committee:

- (a) ☐ This committee is a (National, State or subordinate) committee of the (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (a) ☐ This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is as follows:
- | | | |
|--|--|---|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Corporation w/o Capital Stock | <input type="checkbox"/> Labor Organization |
| <input type="checkbox"/> Membership Organization | <input type="checkbox"/> Trade Association | <input type="checkbox"/> Cooperative |
- (b) ☐ This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)

In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (a) ☒ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (b) ☐ This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraising

- | | | |
|---|---------------|------------------|
| 1. <u>COLLEMAN FOR SENATE</u> | FEC ID number | <u>C00386158</u> |
| 2. <u>REPUBLICAN PARTY OF MINNESOTA</u> | FEC ID number | <u>C00001313</u> |
| 3. _____ | FEC ID number | <u>C</u> |
| 4. _____ | FEC ID number | <u>C</u> |
| 5. _____ | FEC ID number | <u>C</u> |

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Write or Type Committee Name

6. Name of Any Connected Organization, Affiliated Committee, Leadership PAC Sponsor or Joint Fundraising Representative

NONE

Mailing Address

CITY

STATE

ZIP CODE

Relationship:

☒ Connected Organization ☐ Affiliated Committee ☐ Leadership PAC Sponsor ☐ Joint Fundraising Representative

7. Custodian of Records: Identify by name, address (phone number - optional) and position of the person in possession of committee books and records.

Full Name

CAMPAN FINANCIAL SERVICES

Mailing Address

7315 WISCONSIN AVENUE
SUITE 310 EAST
METHUEN

CITY

STATE

ZIP CODE

Title or Position

CUSTODIAN OF RECORDS

Telephone number

(301)-1657-1320

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name
of Treasurer

ANTHONY G. SUTTON

Mailing Address

515 PARK STREET
SUITE 250
ST. PAUL

CITY

STATE

ZIP CODE

Title or Position

TREASURER

Telephone number

(651)-554-1111

Treasurer

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Full Name of
Designated
Agent

CAMPAIGN FINANCIAL SERVICES

Mailing Address

7315 WISCONSIN AVENUE

SUITE 310 EAST

BETHESDA

CITY

MD

STATE

20814

ZIP CODE

Title or Position

DESIGNATED AGENT

Telephone number

(301) 654-3320

8. Banks or Other Depositories List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

1. MCGRAW HILL BANK NA

Mailing Address

7901 WISCONSIN AVENUE

W MD1010

BETHESDA

CITY

MD

STATE

20814

ZIP CODE

Name of Bank, Depository, etc.

Mailing Address

CITY

STATE

ZIP CODE

29044251081
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CAMPAIGN FINANCIAL SERVICES

COMPLIANCE • CONSULTING • REPORTING

November 26, 2008

I acknowledge receipt and acceptance of this package on behalf of the Federal Election Commission Electronic Filing Department.

Print Name: _____

Signature: _____

Please return signed document via facsimile to Campaign Financial Services.

Fax: (301) 654-3222


Phone: (301) 654-3220

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DIVISION

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Federal Election Commission
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The FEC added this page to the end of this filing to indicate how it was received.

<input checked="checked" type="checkbox"/> Hand Delivered	Date of Receipt 12/1/08
<input type="checkbox"/> USPS First Class Mail	Postmarked
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<input type="checkbox"/> USPS Express Mail	Postmarked
<input type="checkbox"/> Postmark Illegible	
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<input type="checkbox"/> Overnight Delivery Service (Specify):	Shipping Date
	Next Business Day Delivery <input type="checkbox"/>
<input type="checkbox"/> Received from House Records & Registration Office	Date of Receipt
<input type="checkbox"/> Received from Senate Public Records Office	Date of Receipt
<input type="checkbox"/> Received from Electronic Filing Office	Date of Receipt
<input type="checkbox"/> Other (Specify):	Date of Receipt or Postmarked
<div style="display: flex; justify-content: space-between; align-items: flex-end;"><div style="text-align: center;"> PREPARER (3/2005)</div><div style="text-align: center;">12/1/08 DATE PREPARED</div></div>	

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